

TRANSFER PRICING



What are the TP Developments in Malaysia?

1. Failure to Furnish Contemporaneous TP Documentation

With effect from 1 January 2021, Section 113B(1) of the Income Tax Act 1967 provides that where a company fails to furnish Contemporaneous TP Documentation ("CTPD") upon request by IRBM, the taxpayer may be prosecuted and, upon conviction be subject to a fine of between RM20,000 and RM100,000 and/or imprisonment of up to 6 months.

This applies regardless of whether the company is taxable or not and the Court may still order the taxpayer to furnish the TP Documentation within 30 days or such other period as the Court deems fit.

Where prosecution is not instituted, the taxpayer may nevertheless be subject to a penalty of between RM20,000 and RM100,000 per year of assessment for failure to submit the TP Documentation .

2. Surcharge on the TP Adjustment

Previously, taxpayers would not be subject to penalties if a TP adjustment does not result in additional tax liability.

Effective from 1 January 2021, Section 140A(3C) provides that a surcharge of up to 5% will be imposed on all TP adjustments and this will apply irrespective of whether there is tax payable on the adjustment.

This provision essentially closes the net on taxpayers who previously were not subject to TP penalties notwithstanding a TP adjustment as a result of unabsorbed tax losses, capital allowances, tax incentives, etc.

3. Submission of TP Documentation within 14 days of a request by IRBM

On 29 January 2021, IRBM has updated the Malaysian TP Guidelines 2012 to provide that TP Documentation should be made available within 14 days (as opposed to the previous 30 days) of a request by IRBM.

This requirement will apply to transfer pricing audit cases which have commenced on or after 1 January 2021.

4. Power to Disregard the Structure in a Controlled Transaction

Pursuant to Section 140A(3A) of the Income Tax Act 1967, the Director General ("DG") has the power to disregard a related party transaction if the DG is of the opinion that:

- i. The economic substance of the transaction defers from its form; or
- ii. The form and substance are the same but the transaction, viewed in totality, differs from those which would have been adopted by independent parties behaving in a commercially rational manner and the structure impedes the DG from determining the appropriate transfer price.

Under Section 140A(3B)) of the Income Tax Act 1967, the DG has the power to re-characterise the transaction to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

5. TP Rules 2023 Compliance

The Ministry of Finance Malaysia issued the Income Tax (Transfer Pricing) Rules 2023 ("TP Rules 2023") on 29 May 2023 which are effective from the year of assessment 2023.

This replaces the Income Tax (Transfer Pricing) Rules 2012 ("TP Rules 2012") which was issued in May 2012 and deemed to have come into operation on 1 January 2009.

Summarised below are the 10 key changes on the new TP Rules 2023:

1. Definition of CTPD
2. Information on Multinational Enterprise Group and Person's Business
3. Date on which the CTPD is completed
4. Indication of non-applicability of information, data or documents in the CTPD
5. Timeline to furnish the CTPD
6. Hierarchy in selection of the most appropriate TP method
7. DG's power to review and replace the TP method
8. TP adjustment to the median if price is outside the arm's length range
9. TP adjustment to the median or any other point above median even if price is within the arm's length range
10. Definition of arm's length range

Our Transfer Pricing Service Offerings



Transfer Pricing Advisory & Value Chain Optimisation

Risk Assessment, including high-level review of inter-company business model and pricing arrangements to ensure alignment with transfer pricing requirements.

Value Chain Optimisation and Business Restructuring, is often an ongoing activity within a global business. It may involve centralisation of procurement, moving production to lower cost countries, relocating senior management or integrating acquisitions. Aligning transfer pricing outcomes with business changes and commercial imperatives is essential.



Documentation & BEPS / CbCR Compliance

Documentation Support, utilising latest technologies to assist in preparation of transfer pricing documentation to mitigate against penalties and comply with local regulations across multiple jurisdictions.

Complying with BEPS requirements, including CbCR reporting, is a necessary compliance burden which requires careful management and navigation from a global perspective. Global businesses may be required to prepare CbCR, master file, local file, specific country reports and notifications. In addition, businesses should carefully review, assess and address the risks and opportunities highlighted from these various transparency measures.



Financing, Debt Pricing and Earnings Stripping Rules

Financing and Debt Structures, including preparation of supporting documentation which can be used to support group positions in the face of challenge from tax authorities.

Earnings Stripping Rules, requires comprehensive analysis to bring certainty to complex financing structures on their tax treatment by tax authorities.



Transfer Pricing Implementation and Compliance Management Systems

Governance and Risk Management, to ensure there are systems and processes in place to manage transfer pricing risk and demonstrate good governance frameworks expected by tax authorities and Boards.



Dispute Resolution and APAs

Dispute Resolution, including audit defence, representation before tax authorities, mutual agreement procedures and negotiating outcomes.

Advance Pricing Agreements (APAs), assist in negotiation of unilateral or bi/multi-lateral APAs to increase tax certainty.

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